IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6080 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

HIMATBHAI DAHYABHAI PARMAR (CONDUCTOR)

Appearance:

1. Special Civil Application No. 6080 of 2001

MR SUDHANSHU S PATEL for Petitioner No. 1

MR DP VORA for Respondent No. 1

RULE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 07/10/2004

ORAL JUDGEMENT

1. In the present petition, the Gujarat State Road

Transport Corporation, Baroda, has challenged the award of the Labour Court, Baroda, dated 12th October, 2000 by which the Labour Court was pleased to allow the Reference no.374 of 1992 of the respondent-workman partially, and was pleased to set aside the order of dismissal passed by the petitioner against the respondent-workman, and was further pleased to direct the reinstatement of the respondent-workman with 30% back wages.

2. The respondent-workman who was working as a conductor with the petitioner-Corporation was alleged to have carried ticketless passengers on 21st October, 1988 for which a chargesheet came to be issued, and upon completion of departmental inquiry, the employer having found that the charges are proved by order dated 8-1-1991 imposed the penalty of dismissal from service upon the respondent. The respondent challenged the said penalty before the Labour Court which allowed the Reference in part as mentioned above.

3. From the award of the Labour Court, it can be seen that the charge against the respondent was that on the fateful day while the bus in which he was operating as conductor was carrying 20 passengers to whom he (the respondent) had issued tickets at the value of Rs.1.30ps. each while collecting a fair of Rs.1.50ps. from the passengers. It was also alleged that the conductor had issued used tickets and that one passenger was found travelling without ticket. The petitioner having found that the charges are proved, imposed penalty of dismissal from service as mentioned earlier.

4. Before the Labour Court by passing Purshis Exh.14, the respondent admitted the legality of the inquiry conducted against him. Despite this, the Labour Court examined the legality of the inquiry and taking into account the contentions of the respondent with respect to the conduct of the departmental inquiry, the Labour Court found that since the assertion of the respondent with respect to the defects in the inquiry have gone unchallenged in the deposition, the inquiry was held to have been illegally conducted. The Labour Court has also observed that the petitioner has failed to prove the legality of the inquiry. On both counts, I find that the Labour Court has committed a serious error. When the respondent himself had admitted the legality of the inquiry, there was no further scope for the Labour Court to examine the legality of the inquiry conducted by the petitioner. Secondly, it was the duty of the respondent, if at all, to demonstrate as to how was the inquiry vitiated and not for the petitioner to have taken upon

that responsibility of proving the legality of the inquiry.

5. In the result, I find that the Labour Court erred in holding that the departmental inquiry was not properly conducted.

6. In view of the above conclusion, the only scope open for the Labour Court was to examine whether the charges against the respondent were properly proved or not, in the sense whether there was evidence on record to establish the charges. That too, had to be viewed from the narrow canvas of the scope of judicial inquiry of the findings arrived at by the domestic Tribunal. The Counsel for the petitioner has made available the statement of the reporter who was present at the time of checking of the bus, and I find that the reporter had given a detailed statement giving full accounts of the events, and had supported the case of the department against the respondent. In the decision of DELHI TRANSPORT CORPORATION v. SHYAM LAL reported in 2004 AIR SCW 4711, the Honourable Supreme Court was pleased to observe that statements were made by the passengers to the Checking Officer who was examined during the inquiry. In such a case it cannot be said to be hearsay evidence. The failure on the part of the petitioner, therefore, to examine the passengers cannot be fatal to the inquiry.

7. In view of the above discussion, I find that the Labour Court seriously erred in interfering with the conclusions of the petitioner pursuant to validly conducted departmental inquiry. The law with respect to the jurisdiction of the Court or Tribunal in interfering with the penalty imposed by the employer pursuant to a validly held departmental inquiry is also sufficiently well settled. In the decision of REGIONAL MANAGER, U.P.S.R.T.C. Etawah & Ors. v. HOTILAL AND ANOTHER reported in AIR 2002 SC 1462, the Honourable Supreme Court upheld the order of dismissal of a bus conductor who had misappropriated an amount of Rs.16/- by carrying ticketless passengers. In the decision of CHAIRMAN AND MANAGING DIRECTOR, UNITED COMMERCIAL BANK AND OTHERS v. R.C. KAKKAR reported in AIR 2003 SC 1571, the Honourable Supreme Court reiterated its earlier view expressed in the decision of B.C.CHATURVEDI v. UNION OF INDIA reported in AIR 1996 SC 484, and observed that the Court should not interfere with the administrator's decisions unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that, it was in defiance of logic or moral standards. It was further observed that the Court

would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator.

8. Apart from the present misconduct, I am informed that in the past also the respondent had indulged into similar activities. The Honourable Supreme Court has observed in the decision of JANATHA BAZAR (SOUTH KANARA CENTRAL COOPERATIVE WHOLESALE STORES LTD) ETC. V. SECRETARY, SAHAKARI NOUKARARA SANGH. ETC.reported in AIR 2000 SC 3129, that in case of proved misappropriation, there is no question of considering past record and it is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

9. In conclusion, I find that the Labour Court erred in interfering with the order passed by the petitioner and the conclusions of the Labour Court were without any basis. The respondent having admitted the legality of the departmental inquiry and there not being any material before the Labour Court to come to the conclusion that the charges are not validly proved, looking to the charge of misappropriation of money, it was not open for the Labour Court to interfere with the penalty imposed by the petitioner.

10. In the result, the petition succeeds. The impugned award of the Labour Court is quashed and set aside. Rule is made absolute. No orders as to costs.

(Akil Kureshi,J.)

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